

**BRYAN SMITH**  
Claimant  
VS.  
**PAUL'S WELL SERVICE**  
Respondent  
AND  
**ITT HARTFORD**  
Insurance Carrier

In addition to the testimony of the claimant, the Administrative Law Judge also heard the testimony of the owner of respondent company, as well as claimant's supervisor and coworker, both of whom were present and working with claimant on the date of his alleged injury. As noted by the Administrative Law Judge, claimant's testimony as to how his alleged accidental injury occurred, and what was said to his coworkers on the accident date is not supported by the testimony of his coworkers. This testimony pertains not only to whether or not the accident occurred as alleged, but also is relevant to a determination as to the credibility of the respective witnesses. The Administrative Law Judge found

claimant's testimony exhibited inconsistencies and contradictions and was generally lacking in credibility.

The Administrative Law Judge had the opportunity to observe the in-person testimony of the claimant as well as the other witnesses. He determined that claimant failed to carry his burden of proof that the alleged accident arose out of and in the course of his employment with respondent. The Appeals Board takes into consideration the Administrative Law Judge's opportunity to observe claimant's and the other witnesses' testimony in assessing their credibility. Accordingly, the Appeals Board gives some deference to the conclusions of the Administrative Law Judge in that regard.

Based upon the Appeals Board review of the record as a whole, including the witnesses' testimony and the medical records and reports in evidence, we find that the Order by the Administrative Law Judge should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the February 9, 1996 preliminary hearing Order of Administrative Law Judge Bruce E. Moore should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Joseph Seiwert, Wichita, KS  
P. Kelly Donley, Wichita, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director